

AMENDMENT TO THE DRAWING(S)

Figs. 2 and 3 have been amended. The attached sheets of formal drawings replace the original sheets including Figs. 1-3.

REMARKS/ARGUMENTS

Applicant responds herein to the Office Action dated February 28, 2006.

Applicant's attorneys appreciate the Examiner's thorough search and examination of the present patent application and the indication that claims 5, 10, 11 and 13 would be allowable if rewritten in independent form.

Claims 1-18 are pending in this application. Claims 1-4, 6-9, 12 and 14-18 are rejected. Claims 5, 10, 11, and 13 are objected to.

In response to the Examiner's objection, the Abstract of the disclosure has been amended to substitute the word "instrument" for the word "means" in line 2.

In response to the Examiner's objection to the drawings, corrected replacement drawing sheets in compliance with 37 C.F.R. 1.121(d) are submitted herewith including reference signs 108, 109, and 133 mentioned in the specification.

In response to the Examiner's objection to claim 8, the word "shell" has been changed to "shells".

Claims 12 and 14-17 are rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In response the antecedent basis for the word "nozzle" has been corrected in claim 12. Claim 14 has been cancelled and claim 15 has been amended to depend from claim 1.

Claims 1-4, 6-8, 14 and 18, as understood, are rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 4,286,816 to Tobias ("Tobias") in view of either German Patent No. DE 3238062 to Joachim Hoffmann ("Hoffmann") or German DE 29816807 to Irina Conrad ("Conrad").

In accordance with independent claim1, the claimed invention is a hand-held portable container including one or more shells having an impaling means including a plurality of tines disposed within the shell for impaling excreta. In addition, the housing of the claimed hand-held portable container has an aerosol cartridge that includes a freezing component mounted thereon and the shell includes an aperture for receiving aerosol from the aerosol cartridge. It is not the simple mounting of an aerosol cartridge on the housing that is claimed, but the cartridge associated with apertures in the sheets to deliver aerosol to the shell and thus to the lines.

The claimed invention of claim 1 allows a pet owner to initially engage the excreta with {00767963.1}

tines, regardless of the excreta's consistency and then to activate the aerosol cartridge to deliver aerosol through an aperture in the shell and therefore to the tines in the shell. The resultant freezing of the tines creates a bond between the tines and the outer shell of the excreta already impaled on the tines thereby improving the chance of total removal of all the excreta. The prior art does not teach, describe, or suggest at least these aspects of the claimed invention. Thus, the claimed invention is a technical improvement over the prior art cited by the Examiner.

The Examiner admits that Tobias does not address the problem of substance consistency, that is, the consistency of dog droppings is sometimes too liquid to pick up. Additionally, Tobias describes a grid of knife-edge wedges, which are pressed down through the waste, applying pressure to the feces, and causing the feces to be pushed up through the grid and into the housing for disposal. This is broadly summarized at col. 2, lines 9 to 11 of the Tobias specification as:

“The fecal matter is forced through this grid pattern and retained above the top surfaces of the ribs”.

The Tobias device would actually work well when the excreta's consistency is liquid because of the requirement that the excreta flow between the gaps in the grid. In fact, it would be counter-productive to do what the Examiner is suggesting, i.e., using the Tobias device by initially freezing the outer shell of the excreta. Freezing the outer shell of the excreta would make it more difficult for the knife edge wedges to penetrate the outer, frozen shell of the excreta. If the outer shell of the excreta is initially frozen, then pressing the grid down onto this hard shell would cause the unfrozen excreta, below the frozen shell to spread laterally beyond the confines of the housing, reducing the effectiveness of the Tobias device.

The placement of the grid across the opening of the housing causes the Tobias device to work as a “push, slice, and squeeze to collect” device, whereas the disposal of the tines of claim 1 within the shell in combination with the freezing component causes the present invention to work as a “spike, bond and pull to collect” device. This is clearly a significant functional difference between the claimed invention and the teaching of Tobias, brought about by the different relative positions of the components.

Tobias addresses the problem of excreta collection by applying downward pressure or force to the excreta with a grid to squeeze the excreta upwards through the gaps in the grid into the housing. Therefore, these skilled in the art would not be looking to Tobias for a teaching of excreta collection by applying an upward force or pulling upward the excreta having material

consistency.

Conrad describes a portable container with a cold spray enabling the dog excreta to be cooled before collection and disposal. Conrad teaches spraying the excreta before lifting, whether by spiking, scraping or grabbing or any other means of lifting. As described above, it would be counterintuitive to those skilled in the art to combine Conrad with Tobias. Tobias teaches pushing the excreta down not pulling it up as in Conrad. Secondly, frozen excreta as provided by Conrad, could not be so easily picked up by Tobias' device, and would make Tobias' device less efficient. Combination of those references would make each one less efficient in operation. Therefore, Tobias, Conrad, and their combination do not teach, disclose, or suggest the elements of the present invention recited in claim 1. As stated above, the invention of claim 1 will initially engage the excreta with tines regardless of the excreta's consistency, then activate the aerosol cartridge to deliver aerosol into the shell to create a bond between the tines and the at least partially solidified excreta. The newly formed bond improves the chance of total removal of all excreta off the ground by pulling up.

It is only after first initiating physical contact between the tines and excreta that the freezing is performed to "create a bond" between excreta and tines. Tobias, Conrad, and their combination do not teach, disclose, or suggest such sequence. Moreover, combining of Tobias and Conrad does not make such sequence, i.e., engage-cool-pull, obvious to those skilled in the art.

Moreover, at the time the present application was filed, teachings of either making a physical contact with or cooling and collecting the excreta were mutually exclusive and those skilled in the art were inclined to use one or the other or to initially freeze the excreta and then to subsequently use a physical contact product to collect it. The combination of the two into the single device claimed in Claim 1, however, is more than just a collocation of the two separate teachings. The new claimed device has the synergistic effect of facilitating the creation of a bond between the frozen excreta and the impaling tines. It is only with the benefit of a hindsight that the Examiner realizes that a bond can be created between tines and the excreta following impaling and freezing.

Further, the Examiner makes an assumption on page 3, paragraph 3 of the present Office Action that it would have been obvious to one of ordinary skill in the art to provide an aerosol cartridge similar to those described in Conrad and Hoffman on or in the Tobias housing so that

the feces are first, at least partially, frozen to improve its consistency before retrieval.

A detailed study of Tobias revealed that its housing is specifically designed to allow the product to function in a certain way. Primarily, the cylindrical body 4 is secured to a hollow tubular handle 6 and carries a second smaller cylindrical body 14. The outer cylindrical body 4 has an opening 28 and a shaft 22 coupled to the inner cylindrical body 14 passes through this opening and along the hollow tubular handle 6. An actuation sleeve 44 is slidably mounted externally of the handle 6 and coupled to the shaft 22 and is capable of moving the inner cylindrical body 14 relative to the outer cylindrical body 4 to eject an annular plastic ring 46 from the end of the outer cylindrical housing 4. An outer ring 64 having the grid pattern 71 is slidably inserted into the annular plastic ring 46 and a plastic bag 78 of sandwich size is held in place between ring 46 and ring 64.

The plastic bag 78 takes up or fills the internal space defined by the inner cylindrical body 14 and the inner cylindrical body 14 takes up or fills the internal space defined by the outer cylindrical body 4. The hollow tubular handle 6 carries the movable shaft 22 and all of these aspects are essential for the functioning of the Tobias device as described at Column 4, lines 21 to 39. There is simply no internal space to locate an aerosol cartridge in Tobias.

Alternatively, if the aerosol cartridge is mounted on the housing, the freezing component will not be able to gain access to the internal region of the bag 78 in order to allow the excreta to be frozen after it is impaled, so as to create a bond between the outer shell of the excreta and the portion of the grid in contact with the excreta. Therefore, the Examiner's conclusion that it is obvious to provide an aerosol cartridge similar to those described in Conrad and Hoffman on or in the Tobias housing to casually arrive at the invention described in the present application is wrong.

Furthermore, there is no teaching in Hoffman or Conrad showing how a cold spray unit can be added to the device described in Tobias. A considerable redesign of Tobias is required and without any suggestion in Hoffman or Conrad as to how the product is realized. Again, it is difficult to see how the Examiner can draw the conclusion that the invention of claim 1 is obvious in view of a combination of Tobias and Hoffman or Conrad. The device of claim 1 is a totally different from descriptions in Tobias, Hoffman, and Conrad as well as descriptions in any of the prior art cited in the Search Report.

Claim 18 recites the sequence of steps of the technique of contacting excreta with a solid

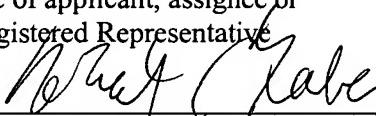
body before freezing the excreta to allow a bond to form between the solid body and the excreta. Claim 18 has limitations which may be achieved with the apparatus of claim 1. All of the above arguments relating to independent claim 1 apply to claim 18.

Thus, Applicants' independent claims 1 and 18 are patentably distinct from Tobias, Hoffman, Conrad, and their combination. Claims 2-13 and 15-17 depend directly or indirectly from above discussed independent claim 1 and are, therefore, patentable for the same reasons, as well as because of the combination of features in those claims with the features set forth in the respective independent claims.

Claims 5, 10, 11 and 13 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Additionally, claims 12 and 15-17 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. §112, second paragraph, set forth in this Office Action and to include all of the limitations of the base claim and any intervening claims.

In view of the above, it is submitted that all claims in this application are now in condition for allowance.

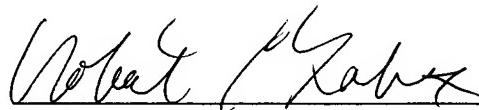
I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as First Class Mail in an envelope addressed to: Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450, on May 25, 2006:

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Signature

May 25, 2005
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Respectfully submitted,



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